

Weatherization Program Notice 01-1

Effective Date - November 9, 2000

SUBJECT: PROGRAM YEAR 2001 WEATHERIZATION GRANT GUIDANCE

PURPOSE: To issue grant guidance and management information for the Low-Income Weatherization Assistance Program (Weatherization) for Program Year 2001.

SCOPE: The provisions of this guidance apply to all grantees applying for financial assistance under the Department of Energy (DOE) Weatherization Assistance Program.

BACKGROUND: Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy to administer the Low-Income Weatherization Assistance Program. All grant awards made under this program shall comply with applicable law including regulations contained in 10 CFR Part 440, and other procedures applicable to this regulation as DOE may from time to time prescribe for the administration of financial assistance.

DOE issued an interim final rule in November 2000 in the Federal Register promulgating changes to the program regulations. This guidance will address these changes which become effective 30 days from the date of publication. The 25% cost share requirement for the Program, which was legislated by the Congress last year, has been repealed by the recent enactment of the EPCA Reauthorization Act Amendments of 2000.

This guidance addresses many of the implementing details not covered in the preamble to the interim final rule, such as data requirements, documentation, verification, follow-up, and similar processing steps for obtaining DOE approvals. DOE will issue, as needed, any additional guidance to assist States not covered in this document. DOE issued WPN 01-3 to provide guidance on the statutory changes on the new average cost per home and the elimination of the separate capital intensive average.

DOE will conduct State training on the new regulations in December 2000. This training will cover many of the areas discussed below and will provide States with the necessary information to better enhance their programs as a result of the flexibility provided in the interim final rule. With the enactment of the statutory changes, DOE will issue a final rule early next year which will incorporate the regulations into a comprehensive, user friendly document including a revised Appendix A. DOE is committed to implementing the provisions of the new regulations consistently, keeping in mind the optional nature of some of the new provisions. Some of these changes will require a certain amount of time to transition into the individual State programs. The Department's Regional Offices (RO) will provide any further training and technical assistance necessary to the States on implementing the new rule.

The interim final rule requires certain changes to a number of reporting elements of the Program. DOE is currently developing the appropriate application and reporting forms along with instructions to be used for this purpose. These revised forms will be available later in the year and will reflect the recent statutory changes. Therefore, this guidance will identify the general

information States will need in order to meet the minimum reporting requirements of the new rule.

NOTE: States should check with their respective RO to assure that the hearing requirement (if needed) has been met on any change to the 2000 plan.

PROCEDURES: This will be a transition year for the Program. Due to delays experienced in issuing the interim final rule, States may either amend their current 2000 State plans to incorporate any of the changes resulting from the interim final rule or choose to wait and make the changes based on their 2001 State plans. The following sections provide States with information concerning areas to be addressed in their annual application to DOE.

1.0 FUNDING

1.1 GENERAL FUNDING: In program year 2001, funding for the Weatherization Program, requiring DOE approval for expenditure, can come from six sources: (1) Federally appropriated funds; (2) Warner and EXXON oil overcharge funds, (3) Stripper Well and other oil overcharge funds (including Texaco) which are subject to Stripper Well settlement rules, (4) LIHEAP funds designated for expenditure under DOE rules, (5) utility funds designated for expenditure under DOE rules; and (6) program income.

Note: The expenditure of leveraged funds requires DOE approval only when those funds are acquired using DOE appropriated monies and designated for use in the DOE Weatherization Program. Also, #4 and #5 above only need to be approved by DOE if the State is charging administrative costs to DOE.

1.2 FEDERALLY APPROPRIATED FUNDS: Weatherization Program Notice 01-2 issues tentative allocations. As in past years, direct grants for Indian Tribes will come out of State allocations. States should hold their public hearings based on their tentative allocations of appropriated funds plus all petroleum violation escrow (PVE) funds they intend to allocate for use under the weatherization program.

Grantees are expected to achieve a rate of production and expenditure that will result in all DOE Weatherization funds being spent by the end of the program year (March 31 for most States, or the end of the program year as approved by DOE) for which they have been allocated.

1.3 ADJUSTED AVERAGE: The new adjusted average expenditure limit for program year 2001 is \$2,500. This average will be adjusted annually by DOE for each subsequent program year beginning with 2002, using the annual Consumer Price Index (CPI) or 3 percent, whichever is less.

Note: States which elect to use the new higher average cost per home in the current program year will need to submit plan amendments in order to incorporate this change to their current 2000 plans or they may wait until Program Year 2001 as described in WPN 01-3.

1.4 FUNDS FOR ADMINISTRATIVE PURPOSES: There is a statutory limit of 10 percent on funds that may be used for administrative purposes. Not more than 5 percent of new funds (total allocation for a program year) may be used by a State for administrative purposes, with the remainder to go to subgrantees. An exception to exceed the 10 percent total administrative requirement may apply to subgrantees funded at less than \$350,000 of DOE funds. States must provide, as a part of their annual plans to DOE, the criteria to be used for allowing the eligible subgrantees, those who receive less than \$350,000 of DOE appropriated funds, authority to use up to an additional 5 percent of their subgrants for administrative purposes. States are encouraged to develop their own criteria; however, the procedures for deciding which of the eligible subgrantees should receive additional funds and what additional percentage they may use must be addressed as a part of the criteria. The limit for maximum administrative expenditures by a State remains unchanged at 5 percent.

Stripper Well funds used for all administrative purposes, i.e., for all programs, may not, in total, exceed 5 percent of Stripper Well funds budgeted by a State. In order to avoid the possibility of disallowed costs, States are reminded of this restriction. Within those parameters Stripper Well funds allocated to Weatherization may be used for administrative expenses. EXXON funds, however, may not be used for this purpose. A State may use Federal funds appropriated for the Weatherization Program to administer the EXXON and/or Stripper Well funds applied to the program. The new DOE and/or Stripper Well funding that may be used for administrative expenses may not exceed 10 percent of the total of new DOE, plus new EXXON, plus new Stripper Well funding for the program. Funds in administrative category accounts may be carried over from the previous budget period.

Program income and leveraged resources that are used in the DOE Weatherization Program may be treated as appropriated funds, in which case they could be added to the total appropriated funds to determine overall administrative costs. No change to the percentage limits for administrative funds addressed above will occur. For further information on program income see section 1.6, for leveraged resources see section 1.7 of the grant guidance.

Note: States that wish to use a substantial amount or their entire DOE grant to administer large sums of leveraged non-Federal resources should refer to section 1.7 of the grant guidance.

1.5 OTHER THAN FEDERALLY APPROPRIATED FUNDS: EXXON and Warner monies are subject to the same rules; Texaco and other subsequent oil overcharge settlement funds are subject to Stripper Well rules. For convenience, in discussing these various funding sources, we will refer to EXXON or Stripper Well as generic categories.

If a State decides to use EXXON funds for its Weatherization program, these funds are to be treated in the same way as appropriated funds. That is: they must be included in the State Weatherization Plan/Annual Application; they are subject to the same State Plan/Application approval, program oversight, and reporting requirements as appropriated funds; and, their use is subject to the same statutory and regulatory constraints as are appropriated funds.

A State may elect to use Stripper Well funds for weatherization projects either separate from, or included within, the DOE Weatherization Program. Where Stripper Well funds have been

approved for use in the program, these funds should be treated exactly as appropriated or EXXON funds. Where their use has been approved for weatherization activities separate from DOE Weatherization, these funds may be included, for information, in the State's plan, but are not subject to DOE rules, oversight, or reporting requirements.

There are no requirements that EXXON or Stripper Well funds be used during a particular period of time, and a State is also permitted to reallocate these funds from one eligible program to another as long as its plan has been amended and approved. If EXXON and/or Stripper Well funds earmarked for expenditure in the prior program year are not expended, the amount of Federal and/or Stripper Well funding that may be used for administrative expenses in the following program year must be adjusted appropriately.

No more than 5 percent of the combined total of EXXON and Stripper Well funds budgeted in a State plan/application may be used for T&TA purposes. Up to an additional 5 percent of these funds may be used for evaluation of a State's Weatherization program, and for innovative efforts for leveraging program funds, provided these activities are approved by the applicable DOE Regional Office. DOE will review this requirement as a part of the upcoming regulatory process to try and give States greater flexibility.

1.6 PROGRAM INCOME: DOE defines program income as any funds earned by grantees and/or subgrantees from non-Federal sources during the course of performing DOE Weatherization work. The income generated must be used to complete additional dwelling units in accordance with DOE rules.

Program income is subject to the specific guidance provided in the DOE Financial Assistance Rule, 10 CFR 600, Subpart B Section 600.124 and Subpart C, Section 600.225 as appropriate and should be treated as an addition to program funds subject to the same rules as appropriated funds. Because of changes to 10 CFR 600, DOE will stipulate, in the grant award, that program income is to be treated as an addition to program funds. Property owner contributions to the program are not considered program income.

Note: States requiring further clarification on program income as it applies to their specific program should contact their respective Regional Office.

1.7 LEVERAGED RESOURCES: DOE defines leveraging as any non-Federal resources (other than funds earned under program income) which are used to supplement the program or are used to run a parallel program (regardless of who initiates the action) and expands energy efficiency services and/or increases the number of dwelling units completed for Weatherization eligible clients. Leveraged resources are not considered to be program income for the purposes of the Weatherization Assistance Program.

Under leveraging, grantees/subgrantees work at developing partnerships with property owners, utility companies, and other entities that generate non-Federal resources for the program. As a result of this effort, there may be an associated grantee or subgrantee cost that can be paid for using a percentage of the DOE grant. That is the purpose of DOE allowing a leveraging budget category in the budget section of the grant award (DOE F 4600.4) (9/92).

Generally, leveraging is not considered program income; however, program income is a form of leveraging. The DOE Financial Assistance Rules do not specifically address leveraged resources; however, the DOE definition and grant guidance provide States with greater flexibility in the use of these resources and fewer reporting requirements than there are for program income.

Note: States requiring further clarification or guidance on leveraged resources as it applies to their specific program should contact their respective Regional Office. For additional information on leveraging in general, please review section 5.9 of the grant guidance.

Landlord contributions are technically a form of leveraged funds but they are not a part of the grant. These funds are not voluntary (in most instances) and, therefore, are treated differently than traditional leveraged funds. The expenditure of these funds must be in accordance with the landlord contribution agreement made with the State or local agency. If there are no strings attached to certain landlord contributions, then the agency may use these funds according to the agency's established policies.

States which consider using a substantial portion or their entire weatherization grant to administer non-Federal leveraged resources must provide the RO with a detailed implementation plan. Under the leveraging provisions of the program regulations, DOE provides States with flexibility to assist them in attracting non-Federal resources. In reviewing this type of request from a State, DOE will provide as much flexibility as possible to facilitate bringing these funds into the Program which will greatly enhance the ability of the State to weatherize additional low-income homes.

States are reminded that DOE funds used in any leveraging effort must be primarily focused toward providing weatherization assistance to eligible low-income persons for energy efficiency and health and safety, and that local community action agencies will continue to be afforded a "preferred status" as the source of delivering weatherization services. Further, a State's implementation plan must detail a reasonable facsimile of the DOE Weatherization Program. That is, the weatherization work is performed consistent with the recommendation of an approved energy audit and that the measures be cost-tested. Adequate reporting of program expenditures and production of completed homes must be part of this type of program. The RO, in consultation with headquarters, will review and approve any plan of this type on a case-by-case basis solely on its individual merit.

1.8 TRAINING & TECHNICAL ASSISTANCE FUNDS: The Weatherization Assistance Program statute permits DOE to use an amount not to exceed 10 percent of the funds appropriated, for T&TA activities. Traditionally, DOE has allocated 2 percent or less for Headquarters T&TA activities and allocated within the formula grants approximately 6 percent for State T&TA. States indicated a need to adjust the allocation to allow the full remaining percentage of funds for T&TA. To address this need, DOE adjusted the 1999 T&TA category in the allocation formula to maximize the amount of funds that could be used for State T&TA activities. This percentage will be reviewed annually and set only after considering the amount of funds appropriated to the Program and an Annual Operating Plan is developed for Headquarters and RO T&TA to address needs. The percentage of funds for Program Year 2001 will reflect the full percentage of T&TA for States and will be indicated in WPN 01-2, Tentative Allocations.

States have indicated that enhancing the technical base of the staff at the Federal, State, and local levels is a top priority and critical to improving the effectiveness of the Program. In 1999, DOE began developing methods of implementing such improvements at the Federal level, such as developing a national conference with multiple technical tracks as part of an overall T&TA improvement strategy. Also in 1999, States chose to use the additional T&TA funds to expand the technical base of their respective programs (i.e. staff training, advanced audit implementation, electric/gas utility industry restructuring, etc.), or to perform State program evaluation. DOE would like to see this trend continue. A description of these activities to be undertaken for the additional T&TA funds must be included as a part of the State T&TA Plan and approved by the RO as provided for in the Annual File, Section II.6 of the Application Package.

States have also indicated they would like to know what T&TA activities are being implemented across the nation. The design of the T&TA report will enable DOE to capture this information, develop a compendium of these activities, and share it with the States on a semi-annual basis. This information will be made available through an electronic medium (i.e., WAPTAC and/or WinSAGA.)

Note: Any T&TA funds not designated for specific approved activities should be returned to the standard program allocation category and used to weatherize eligible low-income homes.

2.0 GRANT APPLICATION

2.1 GENERAL: Any requests for financial and programmatic information which go beyond the requirements of the program regulations, DOE Financial Assistance Rule, and the grant guidance will be made on a case-by-case basis. These requests should be supported by findings such as financial audit reports, deficiencies identified during field program oversight, or deficiencies noted in programmatic and financial reports. To increase public involvement and obtain timely suggestions in developing their plans, DOE strongly urges States to hold two meetings--one at the beginning of the planning process, as well as the formal and required public hearing on the completed plan. The grant application should include planned activities and expenditures using EXXON and/or Stripper Well funds proposed for use within the Weatherization Program. The same budget information should be included for these EXXON and Stripper Well activities, respectively, as is the case for DOE funding.

2.2 INTERGOVERNMENTAL REVIEW: In the development, submission, and review of grant applications, the provisions of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the DOE Implementing Order (10 CFR 1005) remain unchanged.

2.3 APPLICATION PACKAGE: The standard application package is being updated and will be made available shortly to the States for use in 2001. Currently the application consists of 1) an annual file , which is to be submitted each program year for approval by the RO and 2) a master file , which is submitted the first year of the new application and updated as appropriate. The updated application package will reflect the new regulatory changes. WinSAGA will be updated accordingly to reflect the new program changes.

All states will be required to use the new application package in Program Year 2001. For the first program year of the new application package, all grant application components must be submitted so that the U.S. Department of Energy has all information on file for later inclusion in the state's Master File.

Note: States must hold a public hearing on the entire Annual File and the Master File the first year the new application package is used, and then only on the Annual File thereafter. Any proposed change to the Master File must also be addressed in the hearing.

2.4 PUBLIC HEARING: The ROs will carefully review the transcripts of the public hearings on the 2001 State Plans to determine that all local agency issues are properly addressed by the State prior to approval of the final State Plan. States should be aware that if major program changes are made after the initial public hearing, then an additional hearing may be required. Also any change in the distribution of funds not addressed in the initial hearing will necessitate another public hearing. DOE will continue to require all areas of the State to be served. However, DOE will consider approving alternative plans which may require implementing this provision over more than one program year and may include funds from other sources.

DOE reminds States that adequate notice (not less than 10 days) be given prior to holding a public hearing on the State plan. A part of this notice should be a summary or highlights of the proposed changes from the previous years plan. Many subgrantees complain that they are not adequately informed of the contents of the plan until the hearing has begun. Consequently, they are not always prepared to offer comments on the plan or its impact on their local program. Providing this information up front will improve communication between State and local agencies and minimize disputes that may arise at the hearing.

Note: DOE will accept only an official transcript of the public hearing. A State staff person taking notes at the hearing and then transcribing them later for submission to DOE is not acceptable. Also, most States have laws governing the conduct of public hearings, including making a copy of the plan available upon request.

2.5 BUDGET: Grantees should ensure that subgrantees are allowed to charge legitimate program support costs to the program operations category rather than requiring those costs be charged to the administrative category. For example, salaries, space, utilities, telephone and similar costs associated with program support personnel should be charged to program operations.

When States prepare their budgets for 2001, they should include adequate travel expenses for staff to effectively implement the program. DOE considers attendance by State staff at National and regional conferences, and other scheduled and related meetings, as high priorities since these meetings are essential to effective program implementation.

Note: States planning to carryover unused training and technical assistance funds from one program year to another must return these monies to the program budget category and use to weatherize additional homes, unless they can justify to their respective Regional Office adding these carryover amounts to their new training and technical assistance amounts.

T&TA funds may not be used to purchase vehicles or equipment for local agencies to perform weatherization services. The cost of these vehicles or equipment to support the program must be charged to the vehicle/equipment category. Only State purchases of vehicles or equipment, which are directly related to specific training and technical assistance activities, such as monitoring, etc. may be purchased with T&TA funds.

2.6 ENERGY AUDIT IMPLEMENTATION: In Program Year 1992, DOE provided each State with "separate funds" (\$25,000 plus 2.5 percent of its base grant) for energy audit compliance. The Mobile Home Energy Audit (MHEA) is currently being revised to address user concerns and the new regulations may impact some States energy audits, therefore, States will be allowed to carry over these funds to incorporate these changes. All energy audit compliance funds that were carried over into 2000 should be designated for expenditure in 2001 as part of a submitted audit compliance plan and approved by the applicable Regional Office.

2.7 LIABILITY INSURANCE: States are reminded that all work must be covered by liability insurance. States should inform local agencies that sufficient liability coverage for DOE funded activities should be obtained. Liability insurance should be charged to the liability line item in the budget. It should be noted that the liability insurance line item was created to ensure that such costs would never have to be charged to the administrative cost category. (See preamble to Federal Register, Volume 45, Number 40, published February 27, 1980, page 13031).

2.8 FINANCIAL AUDITS: Section 440.23 of the program regulations permits a separate budget category for financial audits. The cost of these audits was previously charged to the already over-burdened administrative cost category and sometimes resulted in less than adequate, quality financial audits. States are encouraged to provide this relief to their subgrantees.

Note: OMB Circular A-133, revised June 30, 1997, should be consulted for new thresholds, etc. States should refer to Section IV.3 of the Application Package and/or contact their respective RO for further guidance or clarification.

3.0 TRAINING AND TECHNICAL ASSISTANCE (T&TA) PLAN

3.1 BASIC: T&TA activities are intended to maintain or increase the efficiency, quality, and effectiveness of the Weatherization Program at all levels. Such activities should be designed to maximize energy savings, minimize production costs, improve program management and crew/contractor "quality of work," and/or reduce the potential for waste, fraud, and mismanagement. The local service providers should be the primary recipients of T&TA activities in the States' T&TA plans.

Section II.7 of the Annual File and section III.6.4 of the Master File in the Application Package, should be used to describe how States will identify and address the needs of the subgrantees in this area. As a minimum, such a description must include the following:

- A. How a State assesses the training needs of its subgrantees;
- B. What training the State will provide for subgrantee staff and if attendance is required;

C. Whether the State requires any certification or training of subgrantee staff prior to hire or by date certain of hire;

D. How the State compares productivity and energy savings between subgrantees and how these comparisons are used in the development of T&TA activities and priorities;

E. What portion of State T&TA funds will be allocated for State program oversight efforts, how such funds will be apportioned, and if any other funding sources will be used for this purpose; and

F. An assessment of State T&TA activities to determine whether these funds are being spent effectively.

3.2 CLIENT EDUCATION: Client education is a key component to any effective weatherization program. The information sharing among the States in this area has brought about a heightened awareness of the importance of client education. DOE will continue in its efforts to identify and network successful State initiatives, and provide training and materials as needed.

3.3 PROGRAM EVALUATION: The national evaluation of the Weatherization Assistance Program concluded that this Program is cost effective. DOE made available to the States a summary of the results of this study which provide the framework for States making changes to their respective programs to improve performance, efficiency, and effectiveness. Likewise, this study assists States and local agencies in obtaining leveraged funds from utilities and other sources by demonstrating documented energy savings and illustrating a professionally operated program. DOE will continue to encourage States to proceed with individual State evaluations. We do ask that each State undertaking such an evaluation coordinate their plans with DOE so that we may each share the other's knowledge to gain the maximum results from our final products. Technical assistance is available to States through DOE, to help with the design and analysis plans for State evaluation studies.

4.0 GRANTEE PROGRAM OVERSIGHT (Program Monitoring)

A. ROLE. The State must conduct an assessment of each subgrantee at least once a year. The State may make as many program assessment visits as necessary and for which resources are available. By the close of the program year, the State is expected to have completed a comprehensive review of each subgrantee including its last financial audit. Failure to comply with this requirement is sufficient cause to require special conditions to the grant under 10 CFR 600.212.

Note: An exception to the annual subgrantee visit requirement can be made for those agencies designated as "exemplary" agencies by the State. This designation(s) and a justification for each must be included in the State monitoring plan and approved by the RO. The designated "exemplary" agencies assessment visit would occur no less often than every other year. States would be required to continue to provide oversight by reviewing all relevant reports for these designated agencies and act accordingly should a problem arise. States are still required to ensure

that these agencies designated as "exemplary" are satisfying all existing program requirements, including a final inspection of all homes weatherized each program year.

B. VISIT. The subgrantee should be briefed on the observations and findings generated by the visit, usually through an exit interview. Within 30 days after each visit, the State will prepare a written report on its findings and send it to the subgrantee for corrective action, if applicable. Noncompliance findings, unresolved within forty-five days, should be reported to the applicable Regional Office. Sensitive or significant noncompliance findings should be reported to the Regional Office immediately.

C. TRACKING. Major findings from subgrantee assessment visits and financial audits should be tracked by the State to final resolution. DOE recommends that the tracking record developed by the State include, but not be limited to: findings including success stories, recommended corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution.

D. ANALYSIS. Annually the State will summarize and review each subgrantee's audit, program assessment reports and findings for internal assessment of State and subgrantee needs, strengths, and weaknesses. The results of this annual assessment should be considered during annual planning and should be available in the State Office for Regional Offices to review during their State program assessment visits.

5.0 POLICY, PROGRAM GUIDANCE, AND REGULATORY CHANGES

5.1 TEMPORARY DISQUALIFICATION OF CERTAIN NEWLY LEGALIZED ALIENS FROM RECEIPT OF WEATHERIZATION BENEFITS: Sections 245A and 210A of the Immigration and Nationality Act (INA), as amended, made certain aliens, legalized under the Immigration and Control Act (ICA) of 1986, temporarily ineligible for weatherization assistance. The provisions of this law have expired. The only potential implications affecting weatherization services are those individual cases that were open while this law was in effect.

The Welfare Reform Act, officially referred to as the Personal Responsibility and Work Opportunity Act of 1996, H.R. 3734, placed specific restrictions on the eligibility of aliens for "Federal means-tested public benefits" for a period of five years. As defined in a Federal Register notice dated August 26, 1997 (62 FR 45256) the Department of Health and Human Services (HHS) is interpreting "Federal means-tested public benefits" to include only those benefits provided under Federal means-tested, mandatory spending programs. HHS Information Memorandum LIHEAP-IM-25 dated August 28, 1997, states that all qualified aliens, regardless of when they entered the U.S., continue to be eligible to receive assistance and services under the Low-Income Home Energy Assistance Program (LIHEAP) if they meet other program requirements. To eliminate any possible contradiction of eligibility for weatherization services at the State and local level for qualified aliens, the definition adopted by HHS will also apply to the DOE Weatherization Assistance Program.

HHS issued Information Memorandum LIHEAP-IM-98-25 dated August 6, 1998, outlining procedures for LIHEAP and Weatherization grantees serving non-qualified aliens to implement new status verification requirements. This memorandum is based on a proposed rule issued by

the Department of Justice (DOJ) on August 4, 1998. The Welfare Reform Act is a complex issue and there is some confusion on the specific application of this part of the Act. To insure Program continuity between LIHEAP & Weatherization for the many subgrantees operating both programs, the DOE Weatherization Assistance Program will follow the interpretation as adopted by HHS. The primary area of confusion resides in the types of local agencies that are exempt/non exempt from "status verification requirements." Local agencies that are both charitable and non-profit would be exempt, which comprise about three-quarters of the local agency network. However, those agencies which are designated as local government agencies operating the Weatherization Program would not be exempt and, therefore, must conduct "status verification." Under the DOJ ruling, grantees subject to this ruling have 2 years to fully implement this procedure after the publication date of the final rule. The final rule has not yet been issued.

Also addressed in the LIHEAP-IM-98-25 is the issue of unqualified aliens residing in multi-family buildings. Since many LIHEAP grantees also use the DOE rules to implement their programs, HHS has adopted the 66 percent provision of the DOE regulations to address this issue. Under DOE rules a multi-family building may be weatherized if 2/3 of the units are eligible for assistance (= in the case of a 2 or 4 unit building). HHS has modified the provision concerning verifying citizenship in multi-family buildings. LIHEAP-IM-99-10 issued June 15, 1999 retracts any requirement that weatherization providers must do any type of certification of citizenship in multi-family buildings.

5.2 MULTIFAMILY ELIGIBILITY: In the interim final rule, DOE offered flexibility by adding certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units are to be occupied by income-eligible persons. In these large multi-family buildings, as few as 50 percent of the units would have to be certified as eligible before weatherization. This exception would apply only to those large multi-family buildings where an investment of DOE funds would result in significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies will be better able to select the most cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions. This flexibility does not apply to any other type of multi-family unit(s).

Note: State and local agencies should use caution utilizing flexibility in this area. The key is the investment of DOE funds coupled with leveraged resources which result in significant energy savings. Absent this investment, lowering the eligibility to 50% may lead to disallowed costs. Local agencies which are uncertain on a given multi-family project should seek approval by the RO through their State Weatherization Program Manager.

5.3 PROCUREMENT OF BUILDING INSULATION PRODUCTS AND MATERIALS CONTAINING RECOVERED MATERIALS: Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), states that if a procuring agency using Federal funds purchases certain designated items, such items must be composed of the highest percentage of recovered materials practical. On February 17, 1989, the Environmental Protection Agency promulgated the final rule containing the guidelines for the

procurement of building insulation products. Policy guidance was issued by DOE on February 16, 1990 providing further clarification on this issue.

5.4 HEALTH AND SAFETY: States are again reminded that the primary goal of the Weatherization program is energy efficiency. We are concerned that achievement of this goal continue even with the program changes which allow DOE funds to be used for health and safety risk mitigation. The interim final rule has eliminated the requirement that the cost of all energy-related health and safety risk mitigation be within the per home expenditure average. States are still required to identify types of health and safety procedures and the percentage of costs involved as a part of their overall health and safety plan to be approved by DOE. This change gives State and local agencies greater flexibility and incentive to incorporate new technologies and their costs into their programs by removing health and safety costs from the per-house limitation. In providing this flexibility, DOE will continue to encourage States to be prudent in their oversight of the percentage of funds approved for health and safety mitigation on homes weatherized by their local agencies. Specific health and safety mitigation issues are discussed in Weatherization Program Notice 93-13(A). Also, issues relating to lead paint safe work practices are discussed in section 5.14 of this grant guidance notice.

Health and safety appears in three sections of the final rule ('440.16, '440.18 and '440.21) and impacts directly on the operation of the program by the subgrantees. While these procedures are not a part of the application, under '440.16(h), States are required to submit to DOE for approval at the same time as the annual application, their list of health and safety abatement procedures. Although not required as a part of the hearing on the State plan, DOE strongly encourages States to address their health and safety procedures in a public hearing forum. The hearing on the State plan would offer an excellent opportunity to air these procedures and how they would impact on other components of the plan, and to accept and consider comments from the public.

A number of States have asked if it is mandatory to have a health and safety budget cost category, or can health and safety costs continue to be assigned to the existing program operations category. The interim final rule does not mandate a separate category, but rather allows States to budget health and safety costs as a separate category and, thereby, exclude such costs from the average cost calculation. States are reminded that, if health and safety costs continue to be budgeted and reported under the program operations category, the related health and safety costs would be included in the calculation of the average cost per home.

States should carefully consider the approach to be taken when they draft their health and safety procedures. While ease of accounting is an important consideration, States should keep in mind that activities assigned to the health and safety budget category do not have to be cost-justified by the energy audit. The same items assigned to incidental repair, weatherization material, or installation cost category must be cost-justified. The health and safety plan should be included in Section III.4 of the Master File of the Application Package.

DOE has recently reconstituted the WAP Health and Safety Committee, which is composed of members from all six regions and representing the Regional Offices, State offices and local agencies. The intent is to have a forum to address nation environmental and safety issues. States are encouraged, if there is a concern with a health and safety issue, to contact one of the

members from their region and work through them to bring the issue to the committee attention. Members of the Weatherization Health and Safety Committee can be obtained by contacting your respective RO.

5.5 RENTAL REQUIREMENTS: All States were required to develop rental procedures which address the provisions of Section 440.22 prior to the submission of their application. In developing these procedures, States were encouraged to open a dialogue with their local agencies to ensure that the procedures adopted are both understood and attainable. As with health and safety, these procedures are not a part of the application; however, they do impact directly on the operation of the program by the subgrantees. DOE strongly encourages States to address their rental procedures including any changes from the previous year, in a public hearing forum. The hearing on the State plan offers an excellent opportunity to air these procedures and how they would impact on other components of the plan, and to accept and consider comments from the public.

5.6 ENERGY AUDIT CRITERIA: DOE has eliminated the base audit criteria from the program regulations and thereby the necessity for a waiver, as a part of the interim final rule. Today, virtually all States are now using an approved waiver audit. Special consideration and assistance will be provided to Native American tribes that are direct grantees of the Program and the State of Hawaii in converting their energy audits. DOE will issue new guidance on energy audits after the issuance of the final rule that will detail requirements for single-family, multi-family and mobile home audits. States which need to re-validate their priority list should wait until the new guidance is issued before submitting it to DOE.

Note: Any State not currently using an approved energy audit under the criteria in the interim final rule must describe in their State Plan what new audit they will use and a timetable for implementation.

5.7 CAPITAL INTENSIVE HOMES: Beginning in 2001, there is no longer a separate average for capital intensive homes. All costs previously associated with these types of units must be included in the new \$2500 average cost per home.

5.8 DISASTER RELIEF: DOE issued Weatherization Program Notice 93-12 on July 28, 1993 addressing disaster relief. Upon request and DOE approval, DOE funds may be used for energy-related items such as replacement water heaters in those affected homes. Any measure not currently listed in Appendix A of the program rule must be submitted as a part of any disaster relief plan for approval by DOE.

5.9 LEVERAGING: DOE program regulations permit States to take a percentage of their grant (including PVE funds used under the weatherization program) or a percentage of their training and technical assistance funds to undertake leveraging activities. States must identify in their plan, the specific amount of funds, the details of how those funds will be used for obtaining non-Federal resources, how the funds leveraged will be used to support the DOE Weatherization Program, and the expected leveraging effect of those Federal funds, including PVE.

States must explain in their plans the rationale for diverting program funds, which are designated for distribution to subgrantees based on relative need for weatherization assistance to a leveraging activity. The larger the percentage of the grant used for this activity, the more extensive DOE will expect the rationale to be. In developing plans, States will be allowed flexibility when using T&TA funds for leveraging activities such as: paying for agency or consulting staff to explore general or specific possibilities; holding leveraging meetings; preparing technical materials/briefs; or allowing voluntary match funds from a non-Federal source which will be used to weatherize low-income homes.

However, States that choose to utilize general program funds for leveraging activities must ensure that these funds are used to obtain non-Federal resources that will be used to weatherize the homes of low-income persons by either increasing the number of homes weatherized or increasing the scope or type of services to homes that are weatherized. We realize leveraging efforts will not always be successful, but States should aim to produce at least one dollar leveraged for each dollar expended on the leveraging effort.

5.10 DETERMINING ELIGIBILITY LEVELS AND DEFINING INCOME: In determining the level of eligibility, the State may use either the DOE criteria of 125 percent of poverty or the LIHEAP criteria. This determination, made by the State, must be applied statewide.

The program regulations define "low income" as income in relation to family size. DOE issues annually poverty income guidelines for use in the Program along with a definition of what constitutes income. If the State elects to use the DOE level of 125 percent of poverty, then the DOE definition of income provided annually must also be used. However, should a State elect to use the LIHEAP criteria, then the State may either use the DOE definition of income or as permitted under the LIHEAP regulations, the State may define what constitutes income. Eligibility issues are discussed further in WPN 99-7 issued August 27, 1999.

5.11 DETERMINING PRIORITY SERVICE: The interim final rule provides State and local agencies with additional flexibility to target their services to maximize program effectiveness. In adding the terms "high residential energy user" and "household with a high energy burden" intended to provide States and local agencies with two additional categories of priorities for their discretionary use. These are in no way mandatory and may be used in lieu of, or in any combination with, the existing priority categories of elderly, persons with disabilities, or families with children. By adding these additional categories, State and local agencies are better able to partner with utilities and other programs to leverage additional resources into their programs.

5.12 FUEL SWITCHING: The DOE Weatherization Assistance Program does not permit the general practice of fuel switching when replacing furnaces. DOE does allow the changing or converting of a furnace using one fuel source to another on a limited case-by-case basis only.

Note: As electric base-load measures are approved for use in the Weatherization Assistance Program by DOE, the same restriction above will apply to switching these measures from one source of energy to another.

5.13 NOTIFICATION REQUIREMENTS FOR LEAD HAZARD EDUCATION BEFORE RENOVATION.

All Low-Income Weatherization Assistance Program activities doing renovation work in pre-1978 housing are subject to the provisions of a Federal regulation that requires them to give a specific notification to the occupants of the housing about the potential hazards of lead paint and lead paint dust. This notification applies to all entities who do renovation work and is required when more than two square feet of lead paint surfaces will be disturbed during weatherizing work. This requirement became effective June 1, 1999 and is published in the June 1, 1998 Federal Register, Vol. 63, No. 104. This is an Environmental Protection Agency (EPA) Final Rule, 40 CFR Part 745 titled: Lead; Requirements for Hazard Education Before Renovation of Target Housing. Renovators are required to give a copy of the EPA booklet "Protect Your Family from Lead in Your Home" prior (if mailed, at least seven days) to the start of work. There are several specific exclusions like emergency repairs. Also, there is a record keeping requirement.

EPA has a lead homepage that is a part of the EPA website where there is useful information about this notification requirement, including a fact sheet, frequently asked questions, the above cited Federal Register notice and the above referenced 14 page booklet, including information on how to get the booklet. States and local agencies will have to bear the cost of copying the booklet. States and local agencies needing the booklet for upcoming weatherization work may download the booklet from the website and reproduce it locally. The address for the EPA website is <http://www.epa.gov/lead/leadrenf.htm>.

Note: Please remember - under this regulation local agencies who do not give proper notification could incur hefty fines if found doing renovation work in pre-1978 housing stock where more than two square feet of paint surface are disturbed.

The EPA is drafting another rule concerning lead paint safety in homes, having to do with remodeling and renovation work. We will inform the weatherization network when the draft is ready for comment.

5.14 LEAD PAINT HAZARD CONTROL: HUD's Lead Paint Hazard Control, 24 CFR35, (Part 35) - Lead-Based Paint Poisoning Prevention in Certain Residential Structures rule went into effect September 15, 2000. By calling the National Lead Hot Line, Monday through Friday, 8:30 am to 5:00 pm EST: 1-800-424-LEAD, you may get a copy of the booklet which contains a copy of the Wednesday, September 15, 1999 Federal Register notice of the rule, Qs and As and summary tables pertaining to the rule. Ask the specialist for other publications about lead paint. You may find other valuable lead paint information at the HUD, Office of Lead Hazard Control homepage at: <http://www.hud.gov/lea/leahome.html>

The HUD rule does *not* apply to housing stock constructed after 1977, or to pre-1978 housing which has tested negative for lead-based paint. This rule was *not* intended to cover housing weatherized under DOE grants which is mostly private low-income homes and the work disturbs less than two square feet of interior painted surfaces per room or 20 square feet of exterior surface. However, it is intended for HUD program housing, and may include other Federally-owned homes, such as Departments of Defense and Agriculture housing. Local agencies weatherizing dwellings which are HUD program housing stock, including the HUD Section 8,

voucher housing program (even though DOE funds are to be used), must follow the HUD regulations on lead paint hazard control.

States are reminded to have their subgrantees check their liability insurance for exclusions for doing work in houses with lead paint. Weatherization Agencies should make sure they have adequate liability insurance to cover the work they do in client's homes with lead paint. Such insurance is sometimes expensive unless a "group" rate is obtained. States are in a good position to obtain such rates for their subgrantees.

When lead paint surfaces are to be disturbed, States and local agencies are reminded of the regulations, particularly OSHA Rule 29 CFR 1926, pertaining to lead paint and their potential liability from client and worker lead poisoning. If weatherization crews do not have sufficient training to mitigate the lead paint risk or there are insufficient funds to follow the lead paint work safe practices, weatherization agencies should defer doing the work.

Note: Lead paint is one of many potential health and safety concerns local agencies must consider when weatherizing a home. As such, lead paint safe work measures and the amount of funds used must be a part of the State's approved State health and safety plan. As a part of the health and safety plan, States must identify the procedures for local agencies to follow to address lead paint issues. These procedures, at a minimum, should include the following:

- 1) a description of the lead paint safe work practices to be followed by weatherization crews;
- 2) the timetable for completing any necessary lead paint training for local agency weatherization crews;
- 3) the proper disposal of all materials containing lead paint; and
- 4) the description of a "walk away" policy from dwellings where DOE funds or crew training are insufficient to do the tasks in a lead paint safe work manner.

These units should be referred to HUD or another appropriate agency for rehabilitation work that includes the abatement or control of the lead paint hazard prior to performing any weatherization work using DOE funds.

It should be noted that the "walk away" policy described above applies to homes where the decision has been made based on the presence of lead paint and the lack of funds or training to properly address the hazard. It does not mean the home cannot be weatherized should the audit determine that no lead paint will be disturbed in the process of installing weatherization measures in the home.

5.15 REWEATHERIZATION: The interim final rule permits State and local agencies to weatherize homes previously weatherized from 1993 and earlier. In moving the date from 1985 to 1993, DOE gives the States the flexibility to revisit those homes that may not have received the full complement of weatherization services including the use of an advanced energy audit or addressing health and safety concerns. DOE reminds States and local agencies that in selecting

previously weatherized homes to revisit, there still remain more than 20 million low-income homes that have received no weatherization services to date.

5.16 VEHICLE PURCHASES: In the Notice of Proposed Rulemaking, DOE proposed to create a separate line item for the cost of purchasing vehicles. DOE solicited comments on this proposal as well as an alternative approach which effectively spread this large cost over the entire life of the vehicle and the number of homes served during that period. DOE has decided to not create a separate line item because this distorts the actual cost of weatherization work done on a home. In accepting the alternative proposal in this interim final rule, DOE retains the cost of purchasing vehicles as a part of the amount of funds used to determine the average cost per home currently in '440.18(c)(6).

For some local agencies, purchasing vehicles under the existing rule often forced them to seek low cost weatherization candidate homes, in order to keep their average cost per home within the allowed maximum for the year while ignoring potentially higher energy savings homes. To address the concerns expressed by State and local agencies that the cost of these vehicles and certain types of equipment included in the average cost per home calculation placed an undue burden on them, DOE amended '440.18(b) by adding paragraph (3) which allows State and local agencies to determine the average cost per unit by including only that fraction of the cost of a new vehicle or equipment purchase which was actually "used" during the current year is included.

For example, if a local agency purchases a new vehicle for \$24,000 with an expected useful life of the vehicle of 8 years (96 months), then the cost of that vehicle would be amortized at the rate of \$3,000 per year or \$250 per month. This approach also affects certain types of equipment purchases having a useful life of more than one year and a cost of \$5000 or more as defined by 10 CFR 600. It permits local agencies to spread these costs out over the useful life of the vehicle or equipment purchase, for the purpose of calculating the average cost per home, even though the full purchase price is reported in the year in which it occurs. Reporting requirements for amortized costs for vehicle and equipment purchases will be addressed as part of the changes to the application/reporting requirements.

5.17 POLICY ADVISORY COUNCIL: The Policy Advisory Council (PAC) changes proposed in the NOPR created the largest stir of comments from the local agencies. Consequently, the revised language in the interim final reflected both the feelings generated through the comments as well as a commitment from DOE to make clear what our intentions were in offering States some flexibility in this area. Many argued that the PAC performs very well in their State and provides a unique insight on many poverty issues, including weatherization. They felt that a State body would not offer the same independent oversight and that they would lose an important voice for the local agency in managing poverty programs. In order to change the PAC to a State council or commission, the State must show cause to DOE that the existing PAC is either non-existent or are not functioning as outlined in '440.17. DOE did not intend, nor did it mean to imply, that the State had the discretionary authority to replace the PAC without due cause or process.

As stated in the preamble, DOE is aware that in most instances, the PAC does work as it was intended. DOE would also give preference to any legitimate PAC that was replaced for cause by a State council or commission and then later reconstituted the following year. DOE agrees with the comments that the traditional role played by the PAC should be protected by the regulations. However, DOE and the States are also concerned that in certain States, the PAC does not function as intended and is, in some instances, simply non-existent. Any State which desires to substitute a State council or commission for a PAC, must address this issue as a part of the public hearing held on the annual State Plan. The DOE Regional Office will make the final determination on this request as a part of the review of the application and plan.

Also, the requirement remains that any person(s) employed in any State Weatherization Program can also be a member of an existing commission or council, but would have to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program. One benefit of this change would be that the importance of the role the PAC plays with respect to providing oversight and insight to poverty programs is that this role would be strengthened in those States where it has become an issue and prompted this change.

5.18 ELECTRIC BASE LOAD: By adding the term "electric base-load measures" (EBL) to the program regulations, DOE was describing a new aspect of the evolution of the Program as we move toward whole house weatherization. Typically, addressing just the heating and/or cooling costs of a dwelling unit accounts for only about half of that unit's energy expenditures. DOE does not have to make regulatory changes to add new measures to the Program. The addition of cost-effective EBL measures will give Weatherization agencies greater flexibility to help low-income households reduce their energy costs, and to partner with sources of leveraged funds.

WPN 00-5 issued October 6, 2000, added the use of replacement refrigerators and replacement electric water heaters to the approved list of measures using DOE funds. This program notice also provided the standards of conformance for these two measures. In order to incorporate these EBL measures into an individual State program, certain changes to the energy audit must be adopted and approved by DOE. In most instances, this will necessitate only an assessment component to be added to the audit which will provide the analysis.

6.0 REPORTING

6.1 REPORTING REQUIREMENTS:

The following reports are required on a quarterly basis, due 30 days after the end of the quarter:

A. SF 269 (*Financial Status Report- Long Form*) . Separate 269's are not required for each funding source; however, a detail sheet should be provided showing the funding source by category, where funds were expended.

B. *Quarterly Program Report* captures the production and expenditures for the quarter.

C. SF-272 *Federal Cash Transaction Report*.

The following reports are due semi-annually, 30 days after the end of the six month period:

A. The Training and Technical Assistance (T&TA) Report is designed to elicit a summary of the T&TA activities that States provide. Routine day-to-day activities are not being requested on this report. Rather, only those T&TA activities that States would normally report to DOE are requested.

B. *The Monitoring Report* is used to collect summary information that identifies successes as well as significant problems identified and resolved, as opposed to each and every problem that is found during the reporting period. Only those official visits that would normally be reported to DOE, not routine day-to-day activities, are requested.

C. The *Leveraging Report* is designed to collect information on the use of leveraged funds. States should report on activities which took place using DOE funds as well as activities undertaken with outside resources that are managed at the State level or that flow through the local agencies.

D. The *Success Story Report* is requested on a semi-annual basis, but States are encouraged to send success stories as often as they occur. Each success story should be captured on a separate page.

7.0 CONSOLIDATION/DOWNSIZING ISSUES:

The appropriation level for Program Year 2001 provides a 13.3% increase in funding for the Program. This funding level will continue to challenge States and local agencies to operate cost-effective programs with funding that is still only 71% of the 1995 level. An even greater concern is the ability of some States to meet a cost share requirement, should it be re-imposed by Congress in future years. As a result, there remains a possibility of consolidation and downsizing of State and local agencies. While LIHEAP will increase in 2001, most States have nearly exhausted oil overcharge funds. DOE continues to encourage States to be innovative in their approach to the downsizing and agency closing issues. States should continue to seek alternative approaches to resolving or minimizing the impact of certain reduced funding sources. Examples include: seeking support from State financing agencies, consolidating State central purchasing, evaluating performance versus costs, utilizing local agencies to cover border(s) of neighboring States, and minimizing legal disputes.

States must ensure that all relevant DOE regulations are followed particularly when dealing with the elimination and/or the selection of new local agencies. Section 440.15 places specific criteria on the selection of new agencies. States should include, as a part of the criteria, the ability of the agency to serve an expanded area. Before making a final determination on closing an agency and selecting another, States are reminded that CAA's are given preference. Preference does not mean a guarantee; however, in evaluating a subgrantee's program effectiveness, weight must be given pursuant to '440.15(a)(2)(iii)(3) prior to a final determination on which agencies will operate weatherization programs.

While funding levels for Weatherization have increased, some States may still experience a shortfall of funds to provide service this program year to all areas of the State. To address this issue, States should provide a description of the areas to be served this program year and, if no other funds are available to cover these areas, then States should indicate in their plan how they intend to provide service to these areas in the following program year. No area of a State should go more than one year without weatherization service.

DOE believes that thoughtful deliberation and an open discussion with the affected agencies by the State prior to any final determination makes this transition process easier. Regardless of the level of appropriations for Weatherization, DOE remains committed to providing quality weatherization services to its eligible clients. The States have made great strides over the past several years by committing to the principle of improving the quality of their programs through adopting advanced energy audits and using new techniques to maximize their performance. This principle should not be compromised during the resolution of downsizing/consolidation issues. The strength of this program lies with not how many homes we can weatherized, rather with the quality of the workmanship we put into each one. This commitment to quality translates into documented energy savings, one of the cornerstones of this program.

CONCLUSION: As indicated earlier, the Congressional mandate for a cost share requirement for Weatherization has been repealed. Many States have been successful in obtaining non-Federal resources to commit to the Program, and States are encouraged to continue their leveraging efforts. We should all work together to ensure Weatherization is in the best possible position should a cost share requirement be reinstated by Congress some time in the future.

The Weatherization Assistance Program has always met difficult challenges and has grown stronger as a result. The repeal of the cost share has provided a real opportunity for our network to move the Program forward. Instead of concentrating on developing new administrative systems for funding strategies to keep our programs whole and not lose any States in the process, we can now refocus our efforts on strategies for developing the future of Weatherization. As we celebrate our 25th anniversary this year, we are committed to work together with our stakeholders to continue laying the groundwork for implementation of Weatherization Plus strategies, with the goal of providing more energy savings to more low-income households in the communities we serve throughout the country.

Gail McKinley, Director
Office of Building Technology Assistance
Energy Efficiency and Renewable Energy